

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4726 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ARJANJI BHOLAJI JHALA

Versus

STATE OF GUJARAT

Appearance:

MR DA BAMBHANIA for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/09/2000

ORAL JUDGEMENT

The petitioner challenges the communication dated 20th February, 1987 at Annexure "B" to the petition from the Director, Animal Husbandry, rejecting the

representation of the petitioner by which he had claimed deemed date in the Class-II post of Gujarat Animal Husbandry service. The petitioner seeks a direction on the respondent No.2 to give him deemed date of promotion to Class-II post of Gujarat Animal Husbandry service with effect from 24-8-78 with all consequential benefits including promotion to Class-I post with effect from April, 1987.

2. The petitioner, a Bachelor of Veterinary Science and Animal Husbandry, was recruited in Class-III service in the Animal Husbandry Department of the State of Gujarat, as a Research Assistant with effect from 10th June, 1968. According to him, he was entitled to promotion to Class-II post as per his seniority and merits, but in the year 1978, persons junior to him came to be promoted. The petitioner, therefore, made a representation, but was communicated by letter dated 13th October, 1980 about adverse remarks for the year 1976-77. The adverse remarks are not disclosed, but they related to his temperament. Thereafter, by the letter dated 6th April, 1984, the representation of the petitioner against the adverse remarks was rejected. According to the petitioner, adverse remarks, communicated after a lapse of three years, could not be treated as adverse.

3. The contention raised on behalf of the petitioner is that not only the remarks, which were communicated to the petitioner, were of very trivial nature, but they were communicated after a lapse of three years and, therefore, they could not have been treated as adverse to the petitioner, who ultimately came to be promoted in Class-II post with effect from 1-1-1985. It is submitted that the petitioner ought to have been promoted from the year 1978 when his immediate next junior Mr.Saiyed was promoted to Class-II post. The petitioner had made representation on 10th October, 1986 to the Government for being given deemed date with effect from the year 1978 and was given a personal hearing on 19-1-87. Thereafter, by the impugned communication dated 20th February, 1987 he was informed that his representation could not be accepted.

4. The learned Advocate appearing for the petitioner strongly contended that no reasons were given for not promoting the petitioner and that even if the petitioner was punished for negligence by stoppage of one increment in the year 1977, he could not have been denied promotion. It was argued that such denial of promotion amounted to double punishment to the petitioner, because the punishment of stoppage of one increment was already

imposed. Admittedly, as stated in the affidavit-in-reply, by an order dated 27-2-1977, the petitioner was subjected to a penalty of stoppage of one increment, without future effect on the charges of negligence in performance of duty and irregularities committed in official transactions. The only question that would be relevant is whether the petitioner was considered for promotion. (Non-promotion would not be a penalty.) A person on whom a penalty is imposed on the ground of misconduct cannot, as a matter of right, claim promotion to higher post on a spacious ground that he has already been penalised and that non-promotion will amount to double punishment to him. This contention, therefore, cannot be countenanced.

5. The learned Advocate for the petitioner argued that no reasons were given for not promoting the petitioner. It is never necessary for the competent authority to give reasons for not promoting an employee. Promotion is not a matter of right. The right is to be considered for promotion and it is stated on oath that the Departmental Selection Committee convened on 30th March, 1978 did consider the case of the petitioner along with others and had found him to be positively unfit for promotion and, therefore, it did not recommend his name for promotion. It is further stated that the Departmental Selection Committee again considered his case on 10th July, 1979 and again did not find him suitable for promotion. Thereafter, the Departmental Selection Committee, which met in October, 1980 had also considered his case for promotion, but did not recommend his name. The Committee again rejected him on 1st October, 1983. Thus, the petitioner's case was duly considered. There is no reason to believe that the Departmental Selection Committee would not have considered the petitioner's case as per the Rules and Regulations and keeping in view the guidelines regarding the communication of adverse remarks. It does appear that the adverse remarks of the year 1976-77 were communicated to the petitioner by letter dated 30th October, 1980, but as stated in the affidavit-in-reply, the petitioner had sent his representation to a wrong authority and while returning it, he was instructed to make a proper representation to a competent authority. The petitioner did not file any representation to the competent authority. There is no reason to assume that the adverse remarks, which were not even disclosed by the petitioner in the petition, which according to him, related to his temperament, were relied upon by the Departmental Selection Committee which had repeatedly rejected him after considering his case from time to

time.

6. Subsequent to his being penalised by imposition of punishment of stoppage of one increment under an order dated 27th February, 1977, which fact is not disputed, it is clear that the petitioner had allowed several years to pass after his first supersession in the year 1978, when his immediate junior Mr Saiyed was said to have been promoted and over whom he wants to be given a deemed date without impleading him as a party. The petitioner's claim is belated after-thought and cannot be entertained. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

8-9-2000 (R.K.Abichandani, J.)

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